

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

**THE JEFFERSON SCHOOL**

Employer

and

**Case No. 5-RC-15322**

**UNITED STEELWORKERS OF AMERICA**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Jefferson School (the Employer), a program of the Sheppard and Enoch Pratt Health System, Inc., is a Maryland corporation with facilities located in Jefferson, Frederick, Cumberland, and Westminster, Maryland. The Employer is engaged in the

operation of a special education facility and residential treatment center serving children and adolescents with emotional disturbances and behavioral disorders. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$250,000 from the business operation described above, and purchased and received at these facilities products, goods and materials valued in excess of \$5,000 directly from points located outside the State of Maryland. The parties stipulate, and I find, that the Employer is engaged in commerce within the meaning of the Act.

The United Steelworkers of America (the Petitioner) seeks to represent a unit of all full-time and regular part-time non-professional employees, resident counselors and education treatment assistants, but excluding all office clerical employees, professional employees, nurses, therapists, social workers, teachers and supervisors as defined in the Act. There is no collective bargaining history between the parties for these employees.

The parties agree that the resource specialists, education one-to-one aides, education treatment assistants (ETAs), residential counselors I and residential counselors II (also referred to as day/evening counselors/per diems), cook, campus service workers, and plant operations mechanics are properly included in a unit found appropriate.

The Employer presented as its witness executive director Jack Pumphrey (hereinafter Pumphrey). The Petitioner presented as its witnesses residential counselor I John Kuczma, residential counselor II Don Kudela, and residential counselor I Timothy McCown.

## **ISSUES**

- 1) Whether the petitioned-for, single-location unit is appropriate;
- 2) Whether the education administrative assistant, clinical administrative assistant, and school records technicians are plant clericals as opposed to office clericals.

## **POSITIONS OF THE PARTIES**

The Petitioner contends that the petitioned-for single-facility unit, consisting of approximately 80 employees, is an appropriate unit. The Petitioner further contends that the clinical administrative assistant, education administrative assistant and school records technician are office clerical employees and should be excluded from any unit found appropriate.

The Employer believes that the only appropriate unit is a multi-facility unit encompassing the Jefferson School locations at Point of Rocks (main campus), Finan, Way Station, and Granite House. The Employer asserts that the appropriate unit should include all (approximately 89) full-time and regular part-time non-professional employees, including regular non-seasonal per diem employees, education one-to-one aides, residential counselors I, residential counselors II, education treatment assistants (ETAs), resource specialists, cooks, food service workers, plant operations mechanics,

school records technician, non-supervisory administrative assistants and secretaries who perform part-time as residential counselors at the Point of Rocks, Granite House, Finan and Way Station facilities, but excluding seasonal employees, professional employees, office clerical employees, senior counselors, licensed practical nurses, registered nurses, therapists, social workers, teachers, guards and supervisors as defined in the Act.

Based on the record as a whole and careful consideration of the arguments of the parties at the hearing and in brief, I find that the single-facility presumption has been rebutted. I further find that the education administrative assistant, the clinical administrative assistant and the school records technician should be included in the unit found appropriate.

### **THE EMPLOYER'S OPERATION**

The Employer provides residential treatment, therapy and special education services to students at its main campus facility at Point of Rocks in Jefferson, Maryland, and three satellite facilities located at Finan in Cumberland, Maryland; Granite House in Westminster, Maryland; and Way Station in Frederick, Maryland. From the main campus, the facility at Finan is approximately 100 miles, Granite House facility is 46 miles, and the Way Station facility is 11 miles. The facility at the main campus serves approximately 30 days students for day school and 43 students for residential services. The main campus is the only location capable of providing residential services. The facility at Finan serves approximately 26 middle and high school students, the facility at Granite House serves approximately 10 elementary and middle school students, and the facility at Way Station serves 10 high school students.

Executive director Pumphrey is located on the main campus. An administrative assistant office manager, coordinator of regulatory compliance and quality management, human resources generalist, and public relations/development coordinator report to Pumphrey. Each of these positions, with the exception of the public relations/development coordinator, has a secretary directly assigned to it. In addition to the secretary, there are office assistant/receptionists assigned to the administrative assistant office manager. Neither party contends that any of these positions should be included in the petitioned-for unit.

The Employer employs ETAs at the main campus and satellite facilities. The ETAs are hourly employees who perform a combination of teacher-assistant duties, as well as child care functions. Their work hours are Monday through Friday from 7:00 a.m. to 3:30 p.m. ETAs must have a high school diploma and previous experience working with children. The resource specialists are employed at all facilities except for Way Station. They are hourly employees who provide educational support and assistance in the classroom, crisis intervention and child care support. Resource specialists work Monday through Friday from 7:00 a.m. to 3:30 p.m., and must have a bachelor's degree or 120 credit hours of coursework. ETAs and resource specialists at the main campus and the other three facilities have identical job descriptions, although at the main campus, the ETAs and resource specialists also have direct involvement in the residential

programs, which exist only at that location. Education one-to-one aides are employed at all four facilities. Residential counselors work exclusively in the residential area on the main campus. They work shifts of 3:00 p.m. to 11:00 p.m. or 10:30 p.m. to 8:30 a.m. The plant operation mechanics are maintenance workers; the bulk of their duties are on the main campus, and their duties at satellite facilities vary depending on the arrangement in the Employer's lease. The cook and campus service workers are only located on the main campus.

The human resources generalist, located on the main campus, coordinates performance appraisals, payroll, and personnel records for employees at all four sites. Wage increases are centrally administered through the human resources department of Sheppard Pratt, and the Employer's wage scale for pay ranges is the same for all four facilities. The Employer offers the same medical insurance plan, long- and short-term disability plan, dental insurance, vision insurance, pension and thrift plan, holidays, and tuition assistance plan for the petitioned-for employees at all four facilities. The dress code policy and work rules/disciplinary procedures apply to employees at all four sites.

Each of the four facilities has its own principal, and the education programs director oversees all four schools. The principals directly supervise those personnel that are generally related to the provision of special education services, and often serve in the first step of the grievance procedure. The principals at the respective facilities can issue informal counseling or verbal warnings without the approval of human resources. Written warnings, before being presented to an employee, must be submitted to human resources at the main campus, or at the very least, a consultation must take place with human resources. Principals do not have the authority to suspend or discharge an employee without approval from the education programs director. The principal has the authority to recommend such action, but the recommendation is reviewed by the education program director, human resources at the main campus, executive director Pumphrey, and human resources at Sheppard Pratt. Employees are not suspended or terminated without ultimate approval from Sheppard Pratt.

Hiring for vacant positions appears to be a joint effort of human resources at the main campus, department heads at the main campus, and the supervisor at the facility. When hiring is necessary, the initial screening of applicants is done through human resources on the main campus. Once a candidate is identified, the application is forwarded to a supervisor at the facility, who will conduct the interview with the applicant and make a recommendation to the human resources representative. If the application process proceeds without problems, the recommendation of the interviewing official ultimately is generally followed.

Employees are hired and assigned to one of the four facilities. In the past twelve months, the record reveals one instance of an ETA from Way Station who worked a single shift as a residential counselor on the main campus, and one instance of the

permanent transfer of a residential counselor II from the main campus to an ETA position at Way Station. In addition, one ETA was initially hired to work at the Granite House facility, but in fact worked at the main campus until the student population was high enough to sustain her at Granite House.

Section 9(b) of the Act states the Board “shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof....” The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be “appropriate.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192, fn. 1; *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf’d. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4<sup>th</sup> Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10<sup>th</sup> Cir. 1962).

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit can be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” *Id.* at 41. The factors that the Board examines in making this determination are centralized control over daily operations and labor relations; extent of local autonomy; similarity of skills, functions, and working conditions; extent of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Rental Uniform Service*, 330 NLRB 334 (1999). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993). Further, as the Board noted in *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980), the party seeking to overcome the presumptive appropriateness of a single-plant unit must show that the day-to-day interests of the employees at the location sought by the other party have merged with those of the employees at the other locations at issue.

I find that there is sufficient evidence in the record establishing similarity of skills and functions, similar terms and conditions of employment, centralized control of labor relations, a lack of local autonomy, and some employee interchange. Thus, I conclude on the facts presented that the Employer has rebutted the presumption that a petitioned-for, single-facility unit is appropriate, notwithstanding the significant geographic separation among the facilities at issue. The evidence reveals that employees at the main campus and satellite facilities have similar job functions, skills and working conditions. The

Employer maintains centralized control over virtually all aspects of labor relations issues, including payroll and performance appraisals. In addition, although principals at the facilities are involved in the hiring process, human resources at the main campus maintains control over the hiring process. The record reveals that there is a lack of significant local autonomy over other aspects of labor relations. Despite the fact that each satellite facility has a principal who can issue informal counseling or verbal warnings, the principals can only make recommendations regarding suspensions or terminations that are subject to multiple layers of review on the main campus and, at times, human resources at Sheppard Pratt.

There is also evidence of employee interchange among the petitioned-for classifications at the main campus and the satellite facilities, despite their distance. Executive director Pumphrey testified that plant operations mechanics sometimes work at the satellite facilities. Similarly, the school records technician (who I find *infra* to be properly included in the unit) regularly visits the satellite facilities. As noted above, there are examples of employees who transferred both temporarily and permanently between the main campus and the satellite facilities. Although these examples are few in number, there are a total of only six unit employees working at all three satellite facilities. Furthermore, executive director Pumphrey testified that staff from satellite facilities are on-call in case there is inclement weather and they are needed on the main campus. In addition, there is contact and interaction between the staff and ETA at Way Station and these classifications on the main campus, since there are residential students on the main campus who attend classes at Way Station during the day. Executive director Pumphrey testified that employees at all four facilities have access to common voice mail and email systems. Employees, when hired, attend a two-week orientation session at the main campus. Once the orientation is complete, employees report to their assigned facility and any further training is provided at that location. In sum, I conclude that the factors favoring a multi-location unit far outweigh the geographic separation of the facilities, and, therefore, that the presumptive appropriateness of the petitioned-for single facility unit has been rebutted. See *Waste Management Northwest*, 331 NLRB No. 51 (2000); *R & D Trucking, Inc.*, 327 NLRB 531 (1999). Compare *Rental Uniform Service, Inc.*, 330 NLRB 334 (1999), in which the Board found significant local autonomy, lack of significant employee interchange, and no evidence of interaction among employees at various facilities.

## DISPUTED CLASSIFICATIONS

The school records technician reports to the health services/record systems supervisor. She is responsible for maintaining all computerized clinical and educational records for students. She has a desk in the records suite and works Monday through Friday from 8:30 a.m. to 4:30 p.m. She visits all four facilities to ensure that records are properly maintained, and ensures that records and shift notes are completed and submitted at the proper time. At least once per year, the school records technician goes to each campus to prepare for an annual audit. She also electronically audits the system and consults with facilities by telephone on a regular basis. The school records technician interacts with ETAs, resource specialists, residential counselors, and education one-to-

one aides in the monthly auditing process, in addition to training employees at all facilities in the use of software. Formal training is provided at orientation and if employees require further assistance, the school records technician provides personal tutoring and small group training. If employees need access to student records, they can request the records from the school records technician or a secretary working in the same area. The school records technician shares a two-office suite with another secretary.

The education administrative assistant reports to the education program director and the main campus principal. She spends approximately one-third of her time providing typing, scheduling and filing services to the principal of the main campus. In the remaining two-thirds of her time, she is responsible for supporting the education department staff. In this capacity, the education administrative assistant is responsible for coordinating meetings and ensuring that ETAs, resource specialists, and others in the department are aware of meeting schedules and locations. The education administrative assistant monitors the education budget and ensures that the appropriate people sign staff-generated purchase requests. The education administrative assistant files materials and, along with others, distributes mail and maintains the supply closet for office and curriculum supplies for the educational staff. She maintains the official school roster, student class schedules, the special services roster for speech, language, and occupational therapy, and the bus roster. The education administrative assistant ensures that teachers are aware of the schedule and due date for grades, compiles report cards, and mails them to parents. If teachers, ETAs, resource specialists, and education one-to-one aides need clerical support, the education administrative assistant provides it. She is an hourly employee and works Monday through Friday from 7:00 a.m. to 4:00 p.m. The education administrative assistant must have a high school diploma and previous experience. She has the same benefits and working conditions as members of the petitioned-for unit.

The clinical administrative assistant reports to the clinical director. She provides clerical and administrative support to those in the residential and clinical areas of the main campus. In supporting the clinical director, the clinical administrative assistant maintains monthly calendars, schedules meetings, and processes incident reports from ETAs, resource specialists, residential counselors and others. The clinical administrative assistant files, transmits, and maintains a log of all incident reports. She alerts staff, including teachers, social workers, doctors, ETAs, and resource specialists, of individual treatment plan (ITP) meetings and schedules students for specific meeting times. The clinical administrative assistant maintains supplies for the clinical department, processes forms for requested items, and schedules haircuts for residents. She assists with the Client Care Monitoring committee meeting by posting the time and date of the meeting, processing the minutes and distributing them to the team members. The clinical administrative assistant is hourly paid and has the same benefits and working conditions as other members of the petitioned-for unit.

I find that the education administrative assistant, clinical administrative assistant and school records technician are akin to plant clericals and should be included in the unit found appropriate. In determining whether employees are office clericals or plant clericals, the test is generally whether the employees' duties are related to the production

process or related to general office operations. The distinction between the two is grounded in community of interest concepts. *Cook Composites & Polymers Co.*, 313 NLRB 1105 (1994); *Hamilton Halter Co.*, 270 NLRB 331 (1984). I find that the interests of these three employees are more closely related to the functions served by the employees in the petitioned-for unit than with other office clerical employees.

The education administrative assistant and the clerical administrative assistant spend two-thirds of their time supporting their respective programs and those working in it, and one-third of their time supporting the managers. They, along with the school records technician, have similar terms and conditions of employment as other employees in the petitioned-for unit. The school records technician, education administrative assistant, and clinical administrative assistant work to support the education and clinical staff in providing treatment and care to students. Although there are other secretaries working on the main campus who report to the office manager and are organizationally part of the Employer's administrative hierarchy (see attached organizational chart), the education administrative assistant and the clinical administrative assistant are assigned specifically to their respective programs, and all three of the disputed classifications report to and are administratively apart from the Employer's administrative hierarchy.

## **CONCLUSION AS TO THE UNIT**

Based on the foregoing, the record as a whole, and careful consideration of the arguments of the parties at the hearing and in brief, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time employees employed by the Employer at its Jefferson, Frederick, Cumberland and Westminster, Maryland locations, including education treatment assistants (ETAs), residential counselors I, residential counselors II, resource specialists, education one-to-one aides, cooks, campus service workers, plant operations mechanics, school records technician, education administrative assistant, clinical administrative assistant, but excluding all office clerical employees, professional employees, nurses, therapists, social workers, teachers, senior counselors, guards and supervisors as defined in the Act.

There are approximately 89 employees in the unit found appropriate. Since the unit I found appropriate is broader than the petitioned-for unit, the Petitioner is granted 14 days from the date of this Decision to make an adequate showing of interest, if necessary. Should the Petitioner not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.

## **DIRECTION OF ELECTION**

An Election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll



period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the UNITED STEELWORKERS OF AMERICA.

### **LIST OF VOTERS**

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **FEBRUARY 27, 2002.**

Dated February 13, 2002

at Baltimore, Maryland

/s/ WAYNE R. GOLD  
Regional Director, Region 5



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